

**JOINT CITY OF MORGAN HILL
SPECIAL & REGULAR CITY COUNCIL AND
REGULAR REDEVELOPMENT AGENCY MEETING
MINUTES – OCTOBER 4, 2006**

CALL TO ORDER

Mayor/Chairman Kennedy called the meeting to order at 6:45 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

City Council Action

1. INTERVIEW TO FILL VACANCY ON THE SENIOR ADVISORY COMMISSION

The City Council interviewed Gigi Smith to fill a vacancy on the Senior Advisory Commission.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Ratified** the Mayor's **Appointment** of Gigi Smith to serve an unexpired term on the Senior Advisory Commission; term ending June 1, 2007.*

SILENT INVOCATION

Mayor Kennedy announced that the community recently lost two community leaders to cancer: Susan Robinson and Evelyn Lemberger.

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Mayor Kennedy presented Dr. Jon Hatakeyama with a proclamation; recognizing the Teachers Aid Coalition for being a valuable resource to Morgan Hill educators; applauding the volunteers that give of their time to assisting local schools, and further enhancing the educational experience of all students.

Dr. Hatakeyama invited the Council and the public to the Harvest Wine fundraiser to be held at Clos La Chance Winery on Thursday, October 19, 2006. He indicated that the proceeds would be used to purchase classroom supplies.

RECOGNITIONS

Mayor Kennedy recognized outgoing Architectural & Site Review Board Member James Fruit for his years of service to the City and the community.

INTRODUCTIONS

City Manager Tewes introduced recently hired James Fruit, Chief Building Official and new members to the City Manager's Office as follows: Todd Capurso, Special Assistant to the City Manager (Management Talent Exchange Program, 3-month assignment) and Brian Stott, Assistant to the City Manager. He indicated that Celeste Connolly, Police Dispatcher, could not attend this evening's meeting to be introduced.

The following individuals were acknowledged for their recent promotions: Monica Delgado, Management Analyst by Director of Business Assistance and Housing Services Toy; Tina Rodriguez, Municipal Services Assistant and Tony Haro, Maintenance Worker II by Director of Public Works Ashcraft; Shelly Yowell, Municipal Services Assistant by Director of Recreation & Community Services Rymer; and Danille Rice, Municipal Services Assistant by Council Services & Records Manager Torrez.

CITY COUNCIL REPORT

Council Member Sellers reported on two ballot measures that will appear on the November 7, 2006 general municipal election: 1) Measure F. He indicated that the Community & Economic Development Committee worked on this ballot measure, with hearings being held and support garnished. Measure F would give the City the opportunity to move forward 100 building allocations to the downtown area already allocated under the City's growth control ordinance. He noted that businesses in the downtown have started to flourish and that the City would like to capitalize on this momentum. He felt that Measure F would assist in capitalizing this momentum, and encouraged the community to support Measure F. 2) Proposition 90. He indicated that Council members have been urged to read about this proposition; noting that the League of California Cities strongly opposes this proposition. Although the proposition appears to be innocuous on the surface, it would institute a variety of mechanisms that would make it difficult for cities to function as cities. He urged everyone to oppose Proposition 90.

Council Member Sellers indicated that he serves on the Regional Planning & Transportation Committee, chaired by Mayor Kennedy. He stated that this Committee reviews regional issues. He said that the LAFCo organization takes a look at how cities interact with each other and the County; looking at cities ability to annex land. He stated that LAFCo is proposing an agricultural mitigation policy. He indicated that this policy would be a shift in policies that are applied to agricultural lands. The proposed policy would have a direct impact to Morgan Hill; noting that Morgan Hill is surrounded by agricultural lands. The policy would place significant restrictions on what can take place around agricultural lands as well as dictate what agricultural lands can do, in terms of changes. While the goal has some merit, he felt the proposal has significant concerns. He stated that staff has done a good job in pointing out the proposed policy. He was pleased to hear that LAFCo recently decided to postpone the public hearing on this matter for two months as there is significant need for additional public input.

Council Member Sellers indicated that there are two events that will take place: 1) the Centennial Recreation Center grand opening later this month. He said that a lot of work has gone into the construction of this world class facility, and encouraged everyone to attend the grand opening event scheduled for October 28, 2006. 2) The Economic Development Committee is looking forward to the opening of Trader Joes in November.

CITY COUNCIL COMMITTEE REPORTS

Mayor Pro Tempore Grzan indicated that he attended an Ethics Training session in accordance with AB1234 last week. hosted by the City of Fremont. He said that this was a good training session. One of the things he found interesting is the role of Council members. He found that he could not be as outspoken as he wanted to be when he became a council member. Sitting in this quasi judicial position, the Council has to remain in an unbiased position as it views land use issues, and has been cautioned in this regard. He also felt the laws have handcuffed council members, to some degree, because council members serve as leaders to the community. To be elected to a council seat only to sit and be quite is almost a contradiction to why members decide to serve on the council. He recommended the Council discuss this issue in January when it holds its annual goal setting sessions and how AB1234 affects what the Council is trying to do and accomplish.

CITY MANAGER REPORT

City Manager Tewes reported that Consent Calendar Item 9 recommends a loan to South County Development Builders for the Madrone Plaza Housing project. The action would lend State housing funds to a non profit housing developer for a project discussed many times. He indicated that there is a supplemental item on the Dais that includes the same recommendation, but urges the Council to adopt staff's recommendation by resolution and includes the appropriate findings required by the State run program. He indicated that the Council has adopted a policy that urges the City Manager to evaluate future agendas. If it is found that there is to be a light agenda, the City Manager is to take advantage of the opportunity to cancel the meeting. He informed the Council that he is proposing to cancel the meeting scheduled for Wednesday, October 18, 2006. The next meeting to be held on October 25, 2006.

CITY ATTORNEY REPORT

City Attorney Kern reported an action taken by the Council on June 28, 2006, in closed session, relating to anticipated litigation. The Council gave staff direction with respect to California Trenchless, Inc., regarding a situation that occurred in 2003. California Trenchless was given a \$300,000 contract to perform sewer work on a half mile long area of Butterfield Boulevard. After the work was completed and accepted, trail work was performed for bicycle trails. It was later found that there were compaction issues that made the trail difficult to utilize. She indicated that staff has been dealing with this company ever since to try and have the problem fixed. She informed the Council that the City reached an agreement with California Trenchless who will pay \$45,000 toward the cost of the repairs. This equates to 60% of what staff believes the cost to be. She stated that item 5 on the Consent Calendar would be awarding the contract to commence the repair work.

OTHER REPORTS

Mayor Kennedy reported on the PL566 project; indicating that a quarterly meeting was held last Friday where the City met with the Santa Clara Valley Water District, and congressional representatives. He indicated that Assemblyman John Laird, as well as representatives from the Corp of Engineers, attended the meeting. He stated that the purpose of the meeting was to keep focus on completion of the PL566 project, the flood control project that will relieve the periodic flooding occurring in the downtown area and other parts of Morgan Hill. He said that the Water Resources Development Act contains language the City has been trying to incorporate into the authorization bill that would authorize the PL566 project to proceed. He indicated that Congress adjourned prior to completing/approving this bill. He spoke with Aaron Cutler, with Congressman Pombo's office, today. Mr. Cutler felt strongly that when Congress reconvenes, following the November election, they will approve the authorization bill with the language requested. He contacted Senator Barbara Boxer's staff, as she serves on the Appropriation Committee that will be revising the authorization bill. He indicated that City Manager Tewes was also in contact with Senator Boxer's office. He said the City has been assured that Senator Boxer is in support of getting the language included in the authorization bill. He noted that this has been an ongoing project/process and that it has been in affect for nearly 50 years. He stated that it has been a struggle to keep the project moving forward, and felt that progress is being made slowly. He would like to have the City keep this project moving forward.

City Manager Tewes clarified that the authorization bill and the annual appropriation are both necessary in the federal process. He said that the authorization bill is called the Water Resources Development Act. The authorization bill is typically reviewed every 2-4 years, but that it has been 6 years since the authorization bill was last reviewed. He indicated that a number of issues have been piling up; one being the authorization for the Morgan Hill flood control project. The authorization bill has been passed by the House of Representative and that a similar, but different version, has passed the Senate. He said that there is a conference committee that will include Congressman Pombo and Senator Boxer. He stated that the City is proposing the appropriate language be included in the authorization bill that would allow the project to proceed. He further stated that separately, there is an annual appropriation process, the budget. He said that the project still needs annual appropriation to continue with the engineering work, and that there is an appropriation bill that has not yet been approved by Congress. He stated that it is critical that the authorization bill passes with the appropriate language, or there will be no project.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. Mayor Kennedy indicated that he is wearing a pink band in recognition of Breast Cancer Awareness; fighting the battle against breast cancer. He announced that October is Breast Cancer Awareness Month, and that October 20 is national Mammography Day. He encouraged everyone, especially women, to have breast examinations using mammography. No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that item 2 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 3-6 as follows:*

3. **VACATION OF A PUBLIC SERVICE EASEMENT AT 17590 DEPOT STREET (APN 726-43-006)**

Action: 1) **Adopted** Resolution No. 6054, Declaring Summary Vacation of a Public Service Easement at 17590 Depot Street; and 2) **Directed** the City Clerk to File a Certified Copy of the Resolution in the Office of the County Recorder of the County of Santa Clara.

4. **IRREVOCABLE OFFER OF DEDICATION OF EASEMENT FOR STREET RIGHT-OF-WAY PURPOSES FOR A PORTION OF WALNUT GROVE DRIVE**

Action: 1) **Adopted** Resolution No. 6055, Acknowledging and Deferring Acceptance of the Irrevocable Offer of Dedication of Street Right-Of-Way for a Portion of Walnut Grove Drive; and 2) **Directed** the City Clerk to File a Certified Copy of the Resolution and Irrevocable Offer of Dedication of Street Right-Of-Way in the Office of the Recorder of Santa Clara County.

5. **APPROVE CHANGE ORDER FOR MORGAN HILL WILDLIFE BIKE TRAIL PROJECT**

Action: 1) **Appropriated** \$30,700 from the Current Year Unappropriated Park Maintenance Fund (302) Balance; and 2) **Approved** a Change Order in the Amount of \$75,700 to Repair the Butterfield Linear Park Pathway.

6. **ACCEPTANCE OF PUBLIC IMPROVEMENTS FOR SHADOW MOUNTAIN BAPTIST CHURCH**

Action: 1) **Adopted** Resolution No. 6056, Accepting the Public Improvements for Shadow Mountain Baptist Church; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.

2. **STATEWIDE INFRASTRUCTURE BOND MEASURES**

Council Member Tate indicated that the November election will have extensive ballot measures. He stated that the State is broken, so to speak, as the infrastructure is wearing out. He said that the legislation, at the State level, was able to recognize this fact. He said that there are a series of items that have been placed on the November 2006 ballot and are collectively known as the state-wide infrastructure bond measure. He noted that Proposition 1A is not a bond measure, but a measure that does something for cities; protecting cities against State takeaways of monies received from gasoline taxes. He said the City wants to have this money protected, and encouraged citizen support of Proposition 1A. He indicated that the other propositions go through a gamete of infrastructure for the State: Proposition 1B relates to highway safety, Proposition 1C relates to affordable housing,

Proposition 1D relates to education, Proposition 1E relates to disaster and flood control, and Proposition 84 relates to water (e.g., supply, quality, etc.). He stated that these propositions were referred to the Financial Policy Committee for a recommendation to the Council. He indicated that the Committee strongly recommends Council endorsement of these propositions as the State cannot afford to get further behind improving its infrastructure throughout the state.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0), **Endorsed** State Propositions 1A, 1B, 1C, 1D, 1E and Proposition 84 Which Would Authorize Bond Financing for Critical Infrastructure.*

Redevelopment Agency Action

CONSENT CALENDAR:

Vice-chair Grzan requested that item 8 be removed from the Consent Calendar.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Redevelopment Agency Board unanimously (5-0) **Approved** Consent Calendar Items 7 and 9 as follows:*

7. HOUSING REHABILITATION LOAN FOR 16711 SAN LUIS WAY

Action: *1) **Approved** a Loan of up to \$60,000 Under the Agency's Housing Rehabilitation Loan Program to Rehabilitate the Home at 16711 San Luis Way; and 2) **Authorized** the Executive Director to do Everything Necessary to Prepare and Execute Loan Documents; Subject to Review and Approval by Agency Counsel.*

9. INTERIM LOAN FOR MADRONE PLAZA HOUSING PROJECT

Action: ***Authorized** the Executive Director to do Everything Necessary and Appropriate to **Negotiate**, **Prepare**, and **Execute** a Loan Agreement with South County Community Builders in an Amount not to Exceed \$1.6 Million for the Madrone Plaza Housing Project.*

8. LOAN TO SOUTH COUNTY HOUSING FOR VILLA CIOLINO SITE

Vice-chair Grzan requested that staff explain the reason the loan increased from \$50,000 to \$285,000 as well as for an explanation regarding the discovery of the underground storage tanks.

Director of Business Assistance & Housing Services Toy said that in 2001, South County Housing completed the Villa Ciolino, a 42-unit affordable housing project. He informed the Council that as part of the agreement, South County Housing agreed to demolish the commercial structure located on Monterey Road within five years. He indicated that in September 2005, South County Housing approached the Redevelopment Agency requesting an initial loan of \$50,000 in order to demolish the Monterey commercial site. In February 2006, during the demolition process, South County Housing discovered the underground tanks. It was his understanding that South County Housing conducted two, phase I environmental reviews for the project. Neither of the environmental reviews found that there were underground storage tanks as they were located underneath the slab of the building. He stated that

the Sandborn Maps did not show any prior gas stations on the site. South County Housing spent another \$45,000 conducting further investigations, and that it was determined that it would take another \$190,000 to effectuate the full remediation of the site. Therefore, South County Housing is requesting another \$235,000 above the \$50,000 loan in order to remediate the site with the loan term being extended to November 2008, or sale of the property. It was his understanding that South County Housing is eligible to receive funds from the State's Underground Storage Tank fund, however, the application is a one year process. He stated that South County Housing would like to start the work; reimbursing the City once they receive funding from the State.

Vice-chair Grzan expressed concern that there may be other undetected/buried storage tanks in Morgan Hill.

Mr. Toy stated that in the past, when the City conducted environmental reviews, the City detected underground storage tanks. He said that to the extent the City is involved, staff performs due diligence, but could not answer Vice-chair Grzan's question regarding other possible storage tanks in Morgan Hill.

Chairman Kennedy opened the floor to public comment.

David Heindel, representing South County Housing, stated that at the time the property was purchased by South County Housing, they performed all typical reviews performed by developers; including phase I. He indicated that phase I was conducted in 1999 in which all records were reviewed to try to determine the history of the property. He was told there were no Sandborn Maps this far south; therefore, there was not a lot of information about the site. He said that there were no records anywhere that identified the site as once being used as a gasoline station. The phase I report of 1999 reflected that they did not have knowledge of a gasoline station. When they discovered the tanks, they performed another phase I. The consultant performing the second phase I came to the same conclusion that there were no records any where relating to underground storage tanks. South County Housing has found that it may have been the case that in the 1950s or early 1960s a gasoline station existed on site. The gasoline station closed and the site was converted into a restaurant with a front patio poured over everything. Therefore, there was no evidence there were ever underground storage tanks. He informed the Council that South County Housing performed a chain of titles back to 1952, and that it was found that the Ciolino family owned the property, and were the grantees for the construction of the Ciolino Road. He indicated that the property changed hands a number of times before they took over the property.

No further comments were offered.

Vice-chair Grzan reiterated a concern that there may be other underground tanks yet to be discovered. He suggested that it may be a worthwhile project to go back and identify the location of former gas stations in Morgan Hill. He felt that there may be potential community health risks associated with any undiscovered/undetected underground storage tanks. He said that the discovery resulted in the City paying significantly to clean up the site.

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Authorized** the Executive Director to **Negotiate, Prepare** and **Execute** a Restated Maintenance Covenant and Easement and Related Documents with Villa Ciolino Associates to Increase the Loan Amount from \$50,000 to \$285,000 for Remediation of Underground Storage Tanks at the Southwest Corner of Ciolino Avenue and Monterey Road; Subject to Review and Approval by Agency Counsel.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Mayor/Chairman Kennedy requested that item 12 be removed from the Consent Calendar.

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 10 and 11 as follows:*

10. PUBLIC COMPUTER USE POLICY

Action: **Accepted** Policies for Public Computer Access at Public Facilities.

11. CARRYOVER OF ENCUMBRANCES FROM FISCAL YEAR 2005-2006 FOR FISCAL YEAR 2006-2007

Action: **Received** and **Filed**.

12. SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF SEPTEMBER 13, 2006

Mayor Kennedy requested that page 6, item 6, paragraph 2, be amended as follows: “Mayor Kennedy stated that ~~there~~ this is a dangerous curve where there have been at least two facilities...”

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** the minutes, as amended.*

City Council Action

PUBLIC HEARINGS:

13. ZONING AMENDMENT, ZA-06-09: MYRTLE-LATALA – Ordinance No. 1793, New Series

Planning Manager Rowe presented the staff report on a request for approval of a Residential Planned Development (RPD) zoning for a six unit residential project to be located on Myrtle Avenue. He informed the Council that at the September 12, 2006 meeting, the Planning Commission voted 6-0 to recommend Council approval of the RPD zoning application/request.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1793, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1793, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A RESIDENTIAL PLANNED DEVELOPMENT ON A 0.44 ACRE SITE LOCATED ON THE SOUTH SIDE OF MYRTLE AVENUE, BETWEEN MONTEREY ROAD AND CHURCH STREET (APN 817-01-022) (ZA-06-09: MYRTLE-LATALA) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

14. ZONING AMENDMENT, ZA-06-13: CITY OF MORGAN HILL – TEXT AMENDMENT TO CHAPTER 18.12 TO ALLOW SECONDARY DWELLINGS AS A PERMITTED USE AND AMENDMENT TO CHAPTER 18.18 TO INCREASE THE MAXIMUM ALLOWABLE DENSITY BONUS – Ordinance No. 1794, New Series

Planning Manager Rowe presented the staff report, indicating that the proposed amendments are follow up work to actions taken by the Council earlier this summer. He indicated the Council amended Chapter 18.47, the affordable housing bonus incentive chapter as well as Chapter 18.55, the secondary dwelling unit chapter. He said that proposed amendments to Chapter 18.47 adopted the State's density bonus laws by referencing the provisions all cities can adopt by reference. He stated that Chapter 18.18, the RPD chapter, references the density bonus provisions. He indicated that State law increases the density bonus to 35%. Therefore, staff recommends the City's chapter be amended to increase the density bonus from 25% to 35%. Staff further recommends a change to Chapter 18.12, deleting secondary dwellings units in residential zoning districts and adding them to permitted uses in the R1-7,000 and R1-9,000 zoning districts. He informed the Council that on September 12, 2006, the Planning Commission, on a 6-0 vote, recommended Council approval of the text amendments.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1794, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1794, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING TITLE 18, THE ZONING CODE UNDER CHAPTER 18.12, THE SINGLE FAMILY MEDIUM DENSITY DISTRICT CHAPTER ALLOWING SECONDARY DWELLING UNITS AS A PERMITTED USE AND CHAPTER 18.18,***

THE RPD RESIDENTIAL PLANNED DEVELOPMENT DISTRICT CHAPTER TO INCREASE THE MAXIMUM DENSITY BONUS FROM 25 PERCENT TO 35 PERCENT TO COMPLY WITH THE CALIFORNIA GOVERNMENT CODE (APPLICATION ZA-06-13) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

15. ZONING AMENDMENT, ZA-05-15/DEVELOPMENT AGREEMENT, DA-05-10: BARRETT – SYNCON HOMES – Ordinance Nos. 1795 and 1796, New Series

Planning Manager Rowe presented the staff report on a request to establish a Residential Planned Development (RPD) for a 52-unit project on a 13.5 acre site located on Barrett Avenue that would establish a precise plan for the overall project. Also, being requested is development agreement approval that memorializes the commitments made through the Residential Development Control System competition process, and establishes a schedule for completion of the project. He informed the Council that the Planning Commission recommends Council adoption of the negative declaration/mitigation monitoring and reporting plan, and the approval of the RPD and development agreement.

Mr. Rowe informed the Council that he received an e-mail from the applicant; commenting on two of the requirements as contained on the negative declaration. He referred to page 138 of the agenda packet relating to the requirement of grassy swales to be established around the detention areas to filter out pollutants in storm water. He indicated that the applicant believes the grassy swale would interfere with the use of the area (e.g., play lot/turf area), and would like the requirement removed. If the applicant is required to install a mitigation measure other than a grassy swale, staff would be willing to work with the applicant on the measure. He clarified that the requirement is to provide necessary filtering, and recommends that the measure remain within the negative declaration.

Mr. Rowe referred to page 149 of the agenda packet, the Mitigation Monitoring Program. He referred to the measure that reads “Prior to issuance of a permit, the applicant shall provide two copies of the engineering/geology report prepared by a registered engineer/geologist.” He informed the Council that the applicant’s civil engineer does not believe this type of report to be necessary, and that a typical soils report should be applied. He indicated that this is a requirement under the environmental mitigation as well as a building code requirement. He stated that he spoke with Chief Building Official Fruit prior to the meeting. Mr. Fruit confirms that this is a code requirement; however, there is some discretion, on his part, based on the type of soil recorded on the property. He clarified that staff has the discretion not to require the submittal of the report. Staff recommends the requirement be retained, but that the Chief Building Official be allowed to make the final determination of the necessity of the report.

Council Member Sellers said that should City staff have the latitude not to require a grassy swale, this latitude should be referenced within the mitigated negative declaration. He recommended that this latitude so be stipulated this evening.

Mr. Rowe recommended the mitigation measure state that the applicant will be required to install a grassy swale or a comparable viable filter.

City Manager Tewes said that the kinds of conditions relating to storm water runoff are conditions the City is required to impose under the City's National Pollutant Discharge Elimination System (NPDES) permit. He indicated that the Council adopted a program that states the City is to impose these types of conditions in these types of situations. He inquired whether the Planning Commission had the opportunity to hear the applicant's concerns. If they did not, the Council may wish to refer these concerns back to the Planning Commission.

Mr. Rowe responded that the concerns he addressed were not raised by the applicant at the Planning Commission meeting. He stated that the applicant received these documents in August 2006. At the applicant's request, the applications were continued from the August 18 meeting to the September 12 Planning Commission meeting. The applicant indicated in the e-mail that this was information he did not have at the September 12 meeting. This is a true statement, but noted the applicant received the information prior to the September 12 meeting. He said that had he had the opportunity to discuss the conditions with the applicant prior to the Council's meeting, the applicant would have understood the requirements, and may not have objected to the requirements.

Mayor Kennedy opened the public hearing.

Craig Miott indicated that he was out of town for a couple of weeks, and was not able to address some of these issues with staff. If the grassy swale requirement only pertains to the detention pond, and is not being required throughout the project, he would not object to the condition. Regarding the second issue, he stated that he is satisfied with the latitude being provided with the soils report in terms of satisfying the geological survey.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program with the understanding that there will be some discretion by the building official in being able to make the final decision on the item contained on page 8 of the Mitigation & Monitoring Program as it relates to the grassy swale.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1795, New Series (Zoning Ordinance).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1795, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-1 7,000/RESIDENTIAL PLANNED DEVELOPMENT ON A 13.5 ACRE SITE LOCATED BETWEEN SAN PEDRO AVENUE AND BARRETT AVENUE, IMMEDIATELY WEST OF SAN RAMON DRIVE (APNS 817-59-060 & 817-57-001) (ZA-05-15: BARRETT – SYNCON HOMES) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1796, New Series (Development Agreement).*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1796, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-10 COVERING 32 ALLOCATIONS AWARDED TO APPLICATION MP 04-21: BARRETT-SYNCON HOMES (APNS 817-59-060 & 817-57-001) (DA-05-10: BARRETT – SYNCON HOMES)** by the following roll call vote: **AYES:** Carr, Grzan, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

16. DEVELOPMENT AGREEMENT APPLICATION, DA-05-06: GINGER-CUSTOMER ONE – Ordinance No. 1797, New Series

Planning Manager Rowe presented the request for approval of a development agreement for a five single family residential project proposed at the southeast corner of Ginger Way and Rose Lane. He informed the Council that at the September 12, 2006 meeting, the Planning Commission recommended approval, on a 5-2 vote, with 1 modification. He indicated that the Planning Commission directed staff to work with the project applicant to revise their commitment under the public facilities section as found on page 7 of the development agreement. He stated that the applicant had committed to install full street improvements. However, it was reported, at the Planning Commission meeting, that one of the land owners is not willing to dedicate the land needed for right of way improvements. Therefore, it will not be possible to install full street improvements as committed to by the applicant. The Planning Commission directed staff and the applicant to come up with an alternative commitment that would garner the same number of points under the public facilities category. He indicated that the changes are noted on page 217 under paragraph 14(j)(iv). He informed the Council that two commissioners were not comfortable with having staff and the applicant work out the requirement; forwarding the results to the Council. Their preference was to have the matter brought back to the Commission for review. He clarified that the two commissioners were not opposed to the approval of the project, but were opposed to the procedural way of satisfying the commitment. He stated that it was his understanding that there will be a portion of the road that will have only $\frac{2}{3}$ of the street completed.

Mayor Pro Tempore Grzan inquired whether the completion of a street that narrows down to a $\frac{2}{3}$ street width poses an unsafe condition. He further inquired as to the reason the one property owner is unwilling to provide the right of way.

Mr. Rowe responded that a $\frac{2}{3}$ street width will provide parking, curb and side walk on one side. He clarified that two travel lanes would be provided with a $\frac{2}{3}$ street width, and would not create an unsafe condition.

In response to Council Member Carr's question, Mr. Rowe indicated that a developer needs to provide a letter indicating that they have secured an agreement for right of way purchase as part of the Residential Development Control System application process. However, it was his belief that the property owner may have changed his mind regarding right of way dedication.

Council Member Carr expressed concern that a property owner can change the direction of an entire project that secured residential allotments; holding the City hostage in the continuation of streets, curbs, gutters and sidewalks. He said that the City would like to make sure improvements are installed prior to the completion of a project. He did not know the answer to making sure that project commitments are obtained early enough in the competition.

Mayor Kennedy inquired as to what actions the City can take to persist in getting full street improvements.

City Manager Tewes said that it was his understanding that the issue is not the willingness to bear the cost of providing full street improvements by the developer, but the availability of the right of way. He said the City could contact the property owner(s) in order to seek cooperation. At the end, the Council could, under the Subdivision Map Act, adopt a resolution of necessity, and seek to acquire the property through court action.

Mayor Kennedy opened the public hearing.

Gary Walton informed the Council that it was his belief the problem is due to the fact the property owner has a substandard lot (5,000 square foot lot). Should they be required to dedicate the front portion of the property, it would reduce the lot size to 3,800 square feet. The property owner believes they would give up land only to be able to park in front of the property. It was his belief there is benefit to being able to park on the street. He stated that he does not object to paying in-lieu fees to complete the street frontage at the time the property owner is willing to proceed with improvements. He indicated that he made a commitment to complete a full street, but that there is an unreasonable property owner that is not willing to work with him. He agreed to meet with staff and the property owner to discuss acquisition of the right away necessary to complete the street.

Mayor Pro Tempore Grzan inquired whether the Madrone Market property owner would be willing to trade some of his property in exchange for the installation of improvements.

Mr. Walton said that discussions have taken place between the Madrone Market property owner and the unwilling seller. It was his understanding that the two parties could not come to an agreement for the purchase of a portion of land.

City Manager Tewes said that the City has no governmental authority, and that the City needs to be careful about its relationships with property owners in trying to make acquisitions on behalf of private parties; short of the provisions under the Subdivision Map Act.

Mayor Pro Tempore Grzan indicated that should the property owner ever want to develop the property, he would have to install improvements. Therefore, it would be inevitable that the property owner would lose the front part of the property at some point in the future.

No further comments being offered, the public hearing was closed.

Council Member Sellers indicated that it appears the developer tried to purchase the right of way from a reluctant property owner. Although, there is concern with providing $\frac{2}{3}$ street improvements, and not full street improvements, he did not believe it was a safety issue because this road is not heavily traveled. He would request staff meet one more time with the property owner. He did not consider the discussions with the property owner worthy of a delay. He noted that on his 8-year tenure on the Council, the Council never instituted eminent domain, and that he is not interested in considering this option for this item. He recommended the Council proceed in the approval of the development agreement; requesting that staff to go back and have discussions one more time in order to try and achieve full street improvements.

City Manager Tewes stated that the City could explain the City's regulations to adjacent property owners, but that the City needs to be cautious about urging property owners to do something they can only do amongst themselves.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1797, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1797, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMC-04-07: GINGER- CUSTOM ONE (APNS 726-36-056 & -057) / (DA-05-06: GINGER – CUSTOM ONE)** by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

City Council Action

OTHER BUSINESS:

17. SENIOR ADVISORY COMMISSION QUARTERLY PROGRESS REPORT

Susan Fent, Chair of the Senior Advisory Committee, informed the Council that she is looking at this first quarter report as a pivotal movement for seniors in Morgan Hill. She indicated that the City focused on seniors of the older population, and that it is now expanding the scope to include the 55 and older population. She said that the Commission has begun to focus on developing more comprehensive programming for seniors in the community. What is proposed in the workplan before the Council will result in big changes for seniors and in their quality of life. She identified the goals of the Senior Advisory Commission: develop clarity regarding the demographics of seniors in Morgan Hill; provide

community outreach and senior awareness as well as being able to provide ongoing input on the Centennial Recreation Center in order to make it a successful a senior center; develop a comprehensive list of senior resources; provide community education as well as protocol for the police department, in particular with regards to financial elder abuse and in developing educational programming for the community in general; build awareness regarding sidewalk accessibility for seniors and disabled citizens; develop an emergency disaster preparedness plan for vulnerable seniors/citizens, joining forces with other cities who are developing such plans; and monitor awareness of transportation needs and nutrition issues affecting the community's seniors. She felt this was an ambitious workplan, but that the Commission is excited about the workplan items and believe they can be accomplished with the commissioners in place, including recently appointed Gigi Smith.

Mayor Pro Tempore Grzan inquired whether there is any data on senior needs. He noted the City has the new recreation center that can be expanded to provide recreational services; noting that a range of services are needed by seniors. He stated that the services could include consultations with attorneys for trust, deeds, etc.

Commissioner Fent indicated that the Senior Advisory Commission met yesterday. At this meeting, Commissioners compiled a list of programming ideas that have been shared with the YMCA. Programming suggestions do not only include recreational activities, but considering the broader spectrum of programming such as education, support groups and other programming options to interest the 55 and older citizens as well as older seniors. She said that it was her belief that pro bono city attorney services are currently in place at the senior center.

Action: **Information Item only**

18. SENIOR ADVISORY COMMISSION; LIBRARY, CULTURAL, AND ARTS COMMISSION; AND YOUTH ADVISORY COMMITTEE WORKPLANS

Council Member Carr, speaking on behalf of the Public Safety & Community Services Committee, indicated that this is the second time the Council has asked commissions to submit workplan items that will take place over the next fiscal year. He stated that the Committee has taken the opportunity to spend some time with the commissions/committees and review proposed workplan items. He found it valuable to have representatives from all commissions/committees sitting at the table. This afforded each commission/committee members to hear what each are working on. He felt that this is an evolving/improving process that is being undertaken, and that it is important for the Council to maintain this contact. He said that the Committee felt there needs to be improved communications between the Council and the commissions/committees with focus being placed on achieving the goals set by the Council at its goal setting session. The Council could use its commissions/committees to bring input into the process in setting goals. The Council can, in turn, ask the commissions/committees to assist the Council in achieving its goals.

Recreation & Community Services Director Rymer highlighted the workplan items for the Youth Advisory Commission (YAC); Library, Culture & Arts Commission; and the Senior Advisory Commission.

Council Member Tate encouraged other Council members to get involved with the YAC members and their activities. He stated that last year's Senior Citizen ball was incredible and rewarding. He requested Council assistance with chaperoning events, and getting to know these YAC members.

Mayor Pro Tempore Grzan said that in looking at the YAC workplan, they are wonderful and fun activities. In light of the teen center being built, he was looking to address the needs of the youth in the community besides recreational needs. He said that there are resources and ties that need to be provided to the community's youth. He indicated that children have issues with parental abuse, drugs, and other problems that they confront on a daily bases. He inquired whether the City could partner with the County to provide social services; giving the social service agencies access to the community's teens via the CRC. He would like to make sure all needs of the youth and seniors are met. He found the workplans acceptable, but would like to move toward the direction of providing community services; giving individuals the resources needed to address their needs.

Mr. Rymer said that in putting the partnership together, it was acknowledged that there would be an evolution in the development of community services at the CRC facility.

Mayor Kennedy noted that the YAC action plan appears to be a "fun" plan instead of a workplan. He felt this was good because the City wants to involve its youth in good/healthy programs. He stated that he did not want to put a damper on what they are doing. In reading through the bylaws, the bylaws indicate that the YAC's purpose is to be the voice of Morgan Hill's teen community by assessing the recreation and leisure desires of local teens. Further, advocating and pursuing program development before the Parks & Recreation Commission. He did not read much about these goals in the YAC's workplan. He does see the leisure and desires, but does not see program development.

Council Member Tate said that the workplan was put together based on the activities the YAC members are working on. What is not reflected in the workplan is the fact that they have been an ongoing advocate for the skate park. He indicated that the YAC will be working on ongoing projects, and have included in their workplan the projects that are "event oriented" and not the ongoing items.

Mayor Kennedy recommended the workplan include all items YAC members are working on.

Council Member Carr said that the YAC workplan was presented to the Committee as being project/event specific rather than identifying programs/activities they are working on.

Mayor Kennedy recommended the YAC workplan include the work they are doing. He referred to the proposed workplan for the Library, Culture & Arts Commission. He noted that one of the workplan item commits this Commission to submitting monthly columns to the Morgan Hill Times in order to promote and provide updates of their work and programs/services available. He indicated that at one time, the City had an Economic Development Commission that went out on its own direction and ended up in odds with the Council. This created a problem with the Commission having to be disbanded because the Council's direction was different from what they were trying to do. He noted the Municipal Code identifies the duties and responsibilities of the commission. He felt that there were a lot of items the Commission can do on their own. He acknowledged and understood the goal of promoting the activities and actions of this Commission. However, one of the Commission's roles is to reach out and provide

advice to the Council. The City needs to be careful that the Commission does not go too far out on a limb; working at cross purposes. He requested the Commission identify the recommended actions they want to pursue with respect to outreach efforts; obtaining Council support. He would like to make sure the Commission and Council are working together.

Council Member Carr concurred with Mayor Kennedy's comments. He recommended the Commission's advocacies be based on priorities and directions as identified by the Council. He would like the Council to be able to provide the Commission with input and concurrence of their activities. He stated that a good agenda item for the Council to discuss at their retreat is the discussion about Council communications with its boards, commissions and committees and how this is to be accomplished. He noted that Council Member Tate serves in liaison assignments to two commissions, and that Council liaison assignments are not set up with any other boards and commissions.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *By consensus, the City Council **Agreed** to move forward with the suggestions as stated above.*

19. CENTENNIAL RECREATION CENTER (CRC) OPERATIONS UPDATE AND FACILITY RENTAL RATES

Recreation Supervisor Chris Ghione and YMCA Executive Director Debbie Cupp jointly presented a power point presentation on the operations update and facility rental rates for the Centennial Recreation Center; addressing the purpose of the CRC, programming, multigenerational goals, fitness center, aquatics program, Fitlinxx, senior center, teen center, gymnasium, and other programs. Also, addressed was the status of Charter memberships, hours of operations, and current activities/marketing efforts. Mr. Ghione informed the Council that a grand opening event will take place on October 28, 2008.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Carr stated that it was exciting to see how this partnership is working and that it far exceeded his expectations. He said that he cannot wait to see the interaction of individuals using the facility. He felt the facility was a commitment of the Council, and that he appreciated how the report focused on healthy life styles, and what the center can bring/mean to the community beyond just programming. The facility will facilitate changing individual's lives in a positive direction, and felt the City and YMCA staff should be applauded for their work.

Mayor Kennedy concurred with the comments expressed by Council Member Carr. He felt this to be a tremendous achievement. He said that there were a lot of individuals who had concerns as to whether the CRC would work, but felt the facility is heading in the right direction. He was pleased that the CRC would be promoting multi generational interactions, and improving the physical well being of the community; especially at a time the country is facing health problems. He felt the CRC may become the new gem of the City.

Mayor Pro Tempore Grzan stated that he is reserving his applause and is being cautiously optimistic on the outcome/success of the CRC in the community. He felt the City needs to see how the facility works. He looks forward to seeing the facility become a success, financially, and be successful for the community. If the facility is successful, it will always have his full support. He felt the facility is a great endeavor for the community, and that he is pleased that it is being made available.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0): 1) **Received** the Presentation; and 2) **Approved** the Proposed CRC Facility Rental Rates.*

Redevelopment Agency Action

OTHER BUSINESS:

20. COUNCIL GOAL – COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE STRATEGY FOR POSSIBLE REDEVELOPMENT PROJECTS

Agency Member Sellers, Chair of the Community and Economic Development Committee, stated that the Committee built off of what the Agency Board already discussed, and what has been implemented within the Redevelopment Agency. Included in this, is the Agency Board's direction based on what it wanted to see in the new additional Redevelopment Agency funds. He indicated that the Committee looked at two main areas: 1) focus be given to future efforts in three major geographical areas: a) downtown area; b) Monterey Road, between Tennant and Dunne Avenue; and c) Madrone area. He stated that it was the intent of the Council and the Committee to focus on the installation of public improvements that would offset development costs; particularly in the core project area defined above. He identified the following possible public improvement projects: utility undergrounding, parking lot improvements, sidewalk improvements, street and sidewalks, and storm drain improvements. He said that these types of improvements can be used as catalysts that would promote development by the private sector, and would provide a public benefit. If necessary, the Committee recommends the City consider assisting developers and/or businesses to help offset the costs of development; provided they meet a specific criteria. He indicated that the Committee started to develop the criteria; including the newly adopted plans and strategy that have been included in the Economic Development Strategy and in the Downtown Plan. He said that developers have to demonstrate a need for loans, and provide a significant benefit to the community. Also, to be considered are costs that might be instituted such as impact fees, offsite improvements, site improvements, etc. The Committee felt it made sense to take a broad base approach at this time; assuming the Redevelopment Agency has a continued funding source. The Committee felt it would be helpful to have this strategy for projects in the future as the City is able to move forward with the plan amendment.

Chairman Kennedy noticed the boundary is focused on the downtown. He indicated that the City wants to attract industrial businesses to the Morgan Hill Ranch area, or different parts of the City, not necessarily in the downtown area. He inquired how attracting industrial businesses to the City would fit this criteria.

Agency Member Sellers noted the City is proposing to reduce the size of the Redevelopment Plan area boundary. He said that it is difficult to quantify economic development projects, and place specific parameters when they are brand new businesses/industry. He did not know if the Agency Board wants to get too specific. He said that there are may be a few areas that may be worth considering.

Chairman Kennedy referred to parking lot improvements such as the construction of an underground parking garage/structure. He felt that the proposed language would limit the construction of underground parking.

Agency Member Carr clarified that the Committee talked about improving parking.

Agency Member Sellers recommended that the parking item be amended to read “parking improvements.” He noted that the Downtown Plan identifies parking as a long term need, and that parking has become more acute. He said that there are several areas identified as future parking lots and that there are other areas that have not been identified as parking lots. He requested the Agency Board accept the recommended approach, subject to additional refinement in the future.

Agency Member Carr clarified that the Monterey corridor is the focus.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Agency Member Tate agreed with Chairman Kennedy that there is a need for economic development within the business parks.

Executive Director Tewes said that the Agency Board needs to distinguish a process by which the Redevelopment Plan area is established based on restrictions. The Agency Board will then need to decide how it will use the tax increment funds, should the Plan be amended. He noted the Committee is suggesting that a big impact be made within a certain geographic area. Notwithstanding the geographic area, the Committee is suggesting the development of a system that may occur in the event an obsolete warehouse in an industrial area proposes a revitalization project that needs redevelopment assistance to be evaluated under category #2.

Chairman Kennedy recommended the first bullet point be amended to state: “Efforts should be focused on specific areas in town with prioritization...notwithstanding geographic designation” and delete the words ~~priority~~ and ~~lot~~.

Vice-chair Grzan recommended the addition of another category: landscaping in parks.

Agency Member Sellers suggested the inclusion of landscaping in parks be added to item 4.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Accepted** the Community and Economic Development Committee’s Recommended Approach with the inclusion of the above stated modifications.*

21. THE REDEVELOPMENT PLAN AMENDMENT PROVISION REGARDING ACQUISITION OF PROPERTY

Agency Member Sellers indicated that as part of the RDA Plan amendment process, the Agency Board has been considering a variety of issues; one of which is whether or not to alter the City's policy on eminent domain. He stated that the Economic & Development Committee considered two options: 1) retain the policy, or 2) eliminate eminent domain as an option. The Committee focused on what circumstances could eminent domain be retained. The Committee suggests that eminent domain be retained under the strictest possible circumstances; reviewing a list of criteria that would apply. He said that although the Committee felt it important to raise the issue this evening, the Committee is not recommending the Agency Board take action, move forward, or establish a specific policy this evening.

Agency Member Sellers stated that Proposition 90 will have a significant impact on cities' ability to consider eminent domain. The Committee felt it would be wise to wait for the results of the election. He noted the Agency Board will be considering the Redevelopment Plan amendment on November 8, 2006, a date following the November 7 election. Taking no action this evening will give the Agency Board the opportunity to see how the community feels about this issue. Should the City consider eminent domain, the Committee recommends it be applied under certain parameters. He indicated that the current process is one where the City would only consider eminent domain after a good faith effort was made to acquire property; starting offers at appraised value. The Redevelopment Agency would be responsible for any relocation required. It is proposed that eminent domain only apply to business properties, and would not apply to residential properties. The blight redevelopment finding must be made, and the owner must be provided with the opportunity to participate in the redevelopment of property(ies). He said the project must confirm to the Downtown Plan if the project is located in the downtown area. Guidelines are to be established by the Agency prior to the use of eminent domain. He said that there have been a variety of instances where private property owners have requested the City institute eminent domain proceedings as there are specific tax benefits to the property owner, and the Committee felt it important to include this.

Chairman Kennedy felt that education is key to this decision. He supported the idea of taking additional time to hear what property owners and the public have to say about eminent domain. In order to take this item out to the public, you need specific information. He recommended a white paper be produced that he could use when he talks to individuals.

Agency Member Sellers said that eminent domain information will be provided as part of hearings related to the plan amendment process.

Director of Business Assistance & Housing Services Toy informed the Council that a town hall meeting will be held on October 10. He said that answers to frequently asked questions have been posted on the City's website and made available at town hall meetings. There has been discussion about inviting individuals whose properties are located within the affected area (e.g., properties along Monterey Road and the downtown) to talk about this issue. He indicated that everyone will be receiving a notice of the public hearing scheduled for November 8 next week. The town hall meeting to be held on October 10 will be advertised in the newspaper and the City's website. He stated that staff is providing as much information as it can to the public regarding the plan amendment and this issue.

Chairman Kennedy said that eminent domain is a major question as far as the plan amendment is concerned. The question is how the City can get information out in an easy to understand manner to the public; receiving feedback from members of the public and property owners. He suggested a public survey be conducted to receive an assessment on this issue.

Agency Member Carr said that there has not been any specific community outreach on the issue of eminent domain because the Agency has not had its discussion about this issue. He felt the Agency Board will help provide a direction of where it is heading this evening. He stated that a part of the Committee's recommendation is that eminent domain be limited in the scope of use and in the geographic area. The Committee is not recommending that eminent domain be opened to the entire redevelopment area. It has been suggested that a town hall meeting be held; inviting property owners within the area. He felt this would be a great way to reach specific property owners within an area, and that if approved, eminent domain could be used. Property owners could talk to staff about potential uses, and implications to them.

Agency Counsel Kern informed the Agency Board that a mailing will be going out next week to all property owners, business owners, and residents of the project area. The notice will clearly inform individuals that their properties may be potentially subject to eminent domain. Therefore, the Agency Board may receive calls regarding this notice.

Vice-chair Grzan referred to page 259 of the agenda packet, and inquired as to the redevelopment finding.

Agency Counsel Kern said that before any eminent domain action can be taken, there is a clear process that needs to be undertaken that is spelled out in law. She said that a resolution of necessity has to be adopted with a finding made that the property is needed, or is in a blighted condition. Once the City adopts a redevelopment project area, these properties are considered to have met this test.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Vice-chair Grzan said that the issue of eminent domain is of interest to the community and most of the state of California. He noted that a city located to the north of Morgan Hill used the action of eminent domain in an area where they were going to condemn a property; giving the property to another developer for development. He stated that there was a lot of controversy about the proper use of eminent domain. He inquired whether the City would be facing these circumstances; noting that this is not the way the City would probably use eminent domain.

Executive Director Tewes informed the Agency Board that the City already hosted one town hall meeting. There were several questions raised about eminent domain at this meeting. One of the questions raised was how the Agency could obtain the property and convey it to a private party. He indicated the City can only condemn properties for a public purpose. The public purpose is the Redevelopment Plan. He further stated that the City is constrained by Redevelopment Law to sell property on its fair reuse value. He said that the City cannot give property away as it would be a gift of public funds. He indicated that the City is constrained by law as to circumstances it can acquire property, and constrained by how it can be conveyed to a private party. He said that the concept of fair reuse is one that requires an appraisal; the value of the property once it is assembled, and subject to the constraints of the redevelopment finding.

Vice-chair Grzan said that a controversy to the City's neighbor to the north was that the property owner was not allowed to participate in the improvements, and was excluded for some reason. This may be one of the reasons they were upset. He inquired whether this is a situation that would occur in Morgan Hill.

Executive Director Tewes stated that the City has to follow the law. Everyone is mindful of the requirement of "owner participation." He stated that every owner of property within the Redevelopment Plan has the legal right to submit a proposal, and participate in the redevelopment process. He indicated that the Redevelopment Agency has the obligation to evaluate the proposal and make a judgment of whether or not to proceed with the proposal. He clarified that a city cannot move forward with an alternative until it has given the property owner the opportunity to participate in the Redevelopment Plan.

Agency Member Sellers said that it is a goal to allow and encourage all property owners to participate in the process.

Agency Member Tate said that the Committee took a logical structural approach to this issue. He understood from the beginning how much benefit there would be to having this capability. He felt that this option provides the leverage needed to structurally put together the Redevelopment Plan, and has a lot of benefit. However, this is a big issue to the public; one that he needs to understand. However, there is a question about property rights, and a question of using this power to turn property over to private developers. He said that there have been examples of how eminent domain has hurt the city. He felt the City would give itself a higher challenge if it does not given this power. He felt that eminent domain is a good tool to have, but recommended the City not endanger redevelopment moving forward with an emotional public issue.

Chairman Kennedy inquired what would happen if the City does not have the power of eminent domain in the Redevelopment Plan amendment.

Agency Member Sellers said that it was the goal of the Committee to lay out the options to the Agency Board. He said that he has concerns about eminent domain. He supports deferring discussion on eminent domain to the November 8 public hearing, because this would be the appropriate time to have the discussion. He stated that eminent domain is a tool a community can use to complete projects.

Chairman Kennedy recalled the City had a housing project where the City did not have the power of eminent domain to improve a run down, dilapidated mobile home park. The City appraised the property and offered the property owner the appraised value. He indicated that the property owner was not willing to sell for that price. He said that it took years of negotiations and delays to purchase the property. He noted that it took 10 years to develop Tennant Station because the City did not have a developer willing to come in and purchase/develop the entire shopping center. Without the power of eminent domain, it may take years to fix blighted properties, and will cost a lot more than the fair/reasonable market value.

Agency Member Carr stated that the Committee did not look at, and stayed away from looking at how the City would use eminent domain on certain parcels in Morgan Hill. The Committee looked at the strict parameters of how the eminent domain power would be utilized; narrowing the scope of its use to

make it a useful tool in certain circumstances, where necessary. It needs to be made clear that this is a very limited power; one the City takes very seriously. The Committee did not discuss the pros or cons of including eminent domain in the plan amendment based on specific parcels or projects.

Chairman Kennedy noted that Agency Member Sellers is suggesting the Agency Board give this entire issue some time to air out in the public; addressing the item after a period of time. He inquired whether the Committee would like some discussion at this point.

Agency Member Sellers indicated that a notice will be sent to all property owners, and that the notice will ensure the issue is raised and discussed. He felt that Agency members will have opportunities to provide individual input, and for the community to provide their input as well.

Vice-chair Grzan felt that eminent domain should be used when the public's health, safety and/or welfare is at risk. He recalls Tennant Station being vacant, but does not recall it ever being a threat to the public's health, safety or welfare, and would find it difficult to condemn it. He requested that he be provided with an example of how the City might use eminent domain in the downtown area or other areas. He suggested the City demonstrate clearly that eminent domain would be in the best interest of the community; defining the interest, as he did not believe monetary interest is sufficient.

Chairman Kennedy recalled that when Tennant Station was vacant, it had one of the highest number of auto thefts and burglaries because not many individuals patronized the shopping center. This is typical of a blighted space that is not maintained and is run down. He noted the Agency Board has stated that it wants a City that is healthy and viable. He felt that part of public health and viability is economic health. If Tennant Station is not healthy, he did not believe the community would be healthy.

Vice-chair Grzan was not aware of the crime statistics for Tennant Station prior to its expansion or after its expansion. A goal could be stated that the City would be reducing the number of crimes in a particular area by taking certain actions. He felt the public could understand this concept.

Executive Director Tewes said that the debate raises important issues relating to Redevelopment Law and practices. He stated that the voters of the State of California authorized redevelopment as a public purpose, and did so when they approved the constitution amendment two decades ago. The amendment states that there was a need for redevelopment because of the existence of blight. The voters believed it was necessary to meet the public's health and welfare of the community. He said that there are specific findings in the constitution amendment, approved by the voters, and subsequently approved by the state legislature and incorporated into the Health and Safety Code. Voters and the legislator approved the amendments because the existence of blighted conditions have adversely impacted the community. Therefore, the authority to proceed with redevelopment was approved by the voters and is about the protection of public health, welfare, and safety. He noted that Vice-chair Grzan raised a point that staff did not make clear earlier. He said that in any instance in which the redevelopment agency proposes to use eminent domain, the agency needs to make certain statutory findings, and that these findings need to be supported by a 4/5 vote of the Council.

Vice-chair Grzan felt that when the City decides to use eminent domain, it should be very specific and that the conditions be substantiated by an analyst. He indicated that citizens are worried that the City may use this action to benefit developers, and that there is no public benefit. He recommended that the City state to residents that there is a community benefit, and not a developer benefit. He said that he would be likely to approve eminent domain where public benefit has been substantiated/validated.

Agency Member Tate said that he was convinced that should the City have the power of eminent domain, it would never be used. He felt that good points have been identified regarding the use of eminent domain. Although he was not convinced the City would ever use eminent domain, he did not believe the City should jeopardize the plan amendment and its continuation because he did not believe it would be accepted by property owners.

Chairman Kennedy noted that the Committee is recommending this information be explained to the public, encouraging public discussion. Further, that as much information be provided to the public before making any decision or taking any actions.

Vice-chair Grzan stated that he would like to hear back from the Downtown Association, the Chamber of Commerce and others. He acknowledged that it would not be the Agency Board's intention to use eminent domain. He does not know of any issues associated with eminent domain in Morgan Hill; stating that he has no intention of using eminent domain. He stated that he respects property rights, looks at each property owner's view and would not harm them. He hears the public stating that they are fearful of eminent domain. One way to address this concern is to go out to the public and address their concerns. He recommended that the Chamber of Commerce, Downtown Association, and merchants indicate that they understand this issue, and state their support because the City will be making a huge investment to the downtown.

Action: *By consensus, the Agency Board **Discussed** the Council's Community and Economic Development Committee's Recommendation that the Redevelopment Agency Consider **Established** Parameters Under Which the Power of Eminent Domain Would be Used and **Directed** Staff, as stated above. This item will return to the Agency Board on November 8, 2006.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Pro Tempore Grzan inquired where Morgan Hill is in its health care efforts and restoring the hospital. He requested the Council hear back from the Morgan Hill Medical Health Foundation.

Mayor Kennedy noted the City has been having a difficult time in getting the Health Foundation to come before the Council and present a report. He requested a report be presented from the Daughters of Charity and the DePaul Medical Center on the status of their facility as soon as possible. He indicated that he spoke with Dick Oliver who is on the Health Foundation Board, and expressed to him the Council's frustration. He suggested that Mr. Oliver contact the board chair directly and call a meeting.

City Manager Tewes informed the Council that at its direction, he directed a letter to the Morgan Hill Community Health Foundation expressing the Council's desire that they advise the City when they can make a report on how they are meeting their objectives, how they are meeting the City's medical service objectives, and to address the financial stewardship of the resources the tax payers made available to the Foundation. He indicated that he has been advised that a meeting of the Foundation Board has been called, and that at the conclusion of that meeting, they will respond to his request. It was his belief the Council would like to have a report from the Daughters of Charity at the same time.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:15 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY